

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 5, 2001
at 3:30 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: Sen. Vicki Cocchiarella (D)

Members Absent: None.

Staff Present: Nancy Bleck, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 33, 1/31/2001; SB 364,
2/1/2001; HB 129, 1/31/2001
Executive Action: SB 33; HB 94

HEARING ON SB 33

Sponsor: SEN. BEA MCCARTHY (D), SD 29, Anaconda

Proponents: Janet Ellis, Montana Audubon
Don Allen, Western Environmental Trade Association
Steve Gilbert, Northern Plains Resource Council

Bruce Farling, Montana Council of Trout Unlimited
 John Youngberg, Montana Farm Bureau Federation
 Cary Hegreberg, Montana Wood Products Association
 Gail Abercrombie, Executive Director, Montana
 Petroleum Association
 Michelle Reinhart, Montana Environmental
 Information Center
 Patrick Heffernan, Montana Logging Association
 Stan Frasier, Montana Conservation Voters
 Jack Stults, Administrator, Water Resources
 Division, Montana Department of Natural
 Resources and Conservation

Opponents: None.

Opening Statement by Sponsor:

SEN. BEA MCCARTHY, SD 29, Anaconda, opened by saying that for 18 months she was involved with the Montana Environmental Policy Act (MEPA) subcommittee along with **CHAIRMAN CRISMORE**. She provided **EXHIBIT (nas29a01)**, Improving the Montana Environmental Policy Act (MEPA) Process, SJR 18, Final Report to the 57th legislature of State of Montana, Legislative Environmental Quality Council, November 2000 (a bright green covered book). **SEN. MCCARTHY** also provided **EXHIBIT (nas29a02)**, A Guide to the Montana Environmental Policy Act, Second Printing, October 2000, produced and published by the Legislative Environmental Policy Office and the Environmental Quality Council, which included the 1999 MEPA statute. **SB 33** was simply a clarifying piece of legislation that the subcommittee that drafted a report asked her to carry. This bill was for an act clarifying existing law to require that new issues not first presented to a state agency in an action challenging a decision under the MEPA must be remanded by the district court to the agency for its consideration. It would amend section 75-1-201 of the Montana codes. This was the first in a series of MEPA bills and probably was the most simple of those proposals.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 2.6}

Proponents' Testimony:

Janet Ellis, Montana Audubon, rose in support of **SB 33** and stated they participated in the Environmental Quality Council (EQC) study. **Ms. Ellis** said that after 18 months and much work by the EQC, this was the one bill that they came up with as a little important piece that the MEPA needed with a technicality that needed to be fixed. She urged support of **SB 33**.

{Tape : 1; Side : A; Approx. Time Counter : 2.6 - 3.4}

Don Allen, Western Environmental Trade Association (WETA), rose in support of **SB 33** and stated that WETA and some of their other members participated in the EQC study and attended the meetings regarding the proposed legislation and other issues. This bill was certainly one that the subcommittee of the EQC did approve, without any problems arising, that needed to be done. He urged passage of **SB 33**.

{Tape : 1; Side : A; Approx. Time Counter : 3.4 - 4}

Steve Gilbert, Northern Plains Resource Council, suggested that any bill that offered clarification and bi-partisan support should be supported by the committee and he urged passage of **SB 33**.

{Tape : 1; Side : A; Approx. Time Counter : 4 - 4.4}

Bruce Farling, Executive Director, Montana Council of Trout Unlimited, stood in support of **SB 33**. He rewarded the good work of the EQC subcommittee for, in an 18 month period of time and in a bi-partisan fashion with input from his organization and WETA and other industry organizations, coming to this recommendation. He asked for passage of this bill.

{Tape : 1; Side : A; Approx. Time Counter : 4.4 - 5}

John Youngberg, Montana Farm Bureau Federation, stood in support of **SB 33** and stated this was a great start for more MEPA bills to come next week.

{Tape : 1; Side : A; Approx. Time Counter : 5 - 5.2}

Cary Hegreberg, Montana Wood Products Association, stated this was just a "warm-up" bill. His association supported this and they worked hard along with the entire group that worked through the interim on the MEPA subcommittee. **SB 33** provided clarifying language and he urged support of this proposal.

{Tape : 1; Side : A; Approx. Time Counter : 5.2 - 5.6}

Gail Abercrombie, Executive Director, Montana Petroleum Association (MPA), rose in support of **SB 33**. She stated **Dexter Busby, MPA's Environmental Safety Committee Chairman**, was involved with this study and endorsed this particular bill that came out of that study.

{Tape : 1; Side : A; Approx. Time Counter : 5.6 - 6}

Michelle Reinhart, Montana Environmental Information Center (MEIC), stated they also supported **SB 33** as a clarification need based on the EQC study and consensus. MEIC felt this was a simple, straight-forward bill and urged passage.

{Tape : 1; Side : A; Approx. Time Counter : 6 - 6.5}

Patrick Heffernan, Montana Logging Association, rose in support of **SB 33** and stated his association also participated in the MEPA interim study. The Montana Logging Association certainly appreciated **SEN. MCCARTHY** bringing this issue forward. **Mr. Heffernan** stated it was amazing what a difference a couple of years could make, remembering the debate over **HB 142** last session that was not quite as friendly. He urged support of **SB 33**.

{Tape : 1; Side : A; Approx. Time Counter : 6.5 - 7}

Stan Frasier, Montana Conservation Voters Inc., spoke in support of **SB 33** and offered written testimony, **EXHIBIT (nas29a03)**.

{Tape : 1; Side : A; Approx. Time Counter : 7 - 7.8}

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. KEN TOOLE referred to the term "issues" used in this bill and asked if and how that was defined. **Jack Stults, Administrator, Water Resources Division, Montana Department of Natural Resources and Conservation**, responded that it was not defined anywhere else in MEPA. He stated he thought the term "issue" referred to an "issue of fact" being contested by the parties.

Closing by Sponsor:

SEN. MCCARTHY stated that the results of the interim study on the MEPA were in Chapter Ten of the green book (exhibit 1). There were 46 findings, 29 recommendations, and with these results came a lot of hard working staff working together along with **Ms. Vandenbosch, legislative staffer**. **SEN. MCCARTHY** thanked everyone for their work and support and urged passage of **SB 33**.

{Tape : 1; Side : A; Approx. Time Counter : 7.8 - 10.8}

HEARING ON SB 364

Sponsor: SEN. JOHN COBB (R), SD 25, Augusta

Proponents: None.

Opponents: Sarah Carlson, Executive Director, Montana
Association of Conservation Districts
Bruce Farling, Executive Director, Montana Council
of Trout Unlimited

Opening Statement by Sponsor:

SEN. JOHN COBB, SD 25, Augusta, opened by saying that **SB 364** was a bill designed to allow conservation districts to make exemptions by rule to project review under the streambed and land preservation laws. He explained that it had been the state's policy to protect and preserve its natural rivers and streams as well as the land immediately adjacent to them, and to prohibit unauthorized projects. This meant that when someone planned a project which was not exempt, the district had to be notified and they, in turn, notified the department. The department then had up to 30 days to inspect it, and it had to notify the applicant within 60 days whether the project was acceptable or not. He admitted that some exemptions were in place now, among them activities for which a plan of operation had already been submitted. He stressed that all his bill did was to allow the district an option, and cited lines 12 through 14 whereas an applicant who had successfully completed a district approved course relating to compliance with pertinent law would be exempted, or a person with an established record of compliance, or projects which had been identified as exclusions under current law. **SB 364** would encourage people to learn how to do things properly and within the guidelines so they would not have to wait 30 to 60 days for approval. Under this proposal, the person would still have to notify the department 15 days prior to taking action. Within 20 days of the notice, a team as described in 75-7-112(2) shall make an onsite inspection. If this team found fault with the proposed action, the applicant could be asked to modify the project, or he could be fined or taken to court in a worst case scenario. He felt that people want to do the right thing, and that was why he proposed an option with this bill. He stated that in many instances, people go through the lengthy application process, follow the instructions in implementing the project, and then no one ever comes out to inspect whether it was done properly. This bill in essence rewards them for their willingness to learn and thus stay in compliance.

{Tape : 1; Side : A; Approx. Time Counter : 10.8 - 17}

Proponents' Testimony: None.

Opponents' Testimony:

Sarah Carlson, Executive Director, Montana Association of Conservation Districts, stood in opposition of **SB 364** and offered **EXHIBIT (nas29a04)**, her business card. She said that her organization had been working on making the permitting process easier and at the same time, balance their responsibility to maintaining a healthy environment. Although she appreciated the sponsor's interest in making the 310 process more user-friendly, she was concerned with the abbreviated version of the information they usually got with the current permitting process. She feared that if the project caused harm, the districts would still be held responsible and had to deal with the consequences after the fact. In closing, she offered to sit down with the sponsor to try to work out an acceptable solution.

{Tape : 1; Side : A; Approx. Time Counter : 17 - 20.8}

Bruce Farling, Executive Director, Montana Council of Trout Unlimited, stated his organization also opposed **SB 364**, mainly because they saw a number of problems with the 310 process. He went on to say that Trout Unlimited and its individual members spent hundreds of thousands of dollars per year working with agencies and private landowners doing stream regulation projects. A lot of these were done to correct problems like inappropriately placed culverts, bank stabilization, or similar mistakes. He stated that research showed that many of these problems occurred because the people either did not go through the 310 permitting or through an abbreviated 310 permit, and stressed that prevention was always preferable to fixing things after the fact. He maintained that his organization supported the existing exemptions for irrigation diversions and projects which already had operating plans, but saw no need to create new exemptions. He saw a number of problems with **SB 364**, namely that there was no uniform curriculum on how to do stream projects with minimal or no environmental damage. He feared that every county could have their own set of rules, confusing an operator who dealt with streams across county lines. He stated that it was entirely possible to educate agencies and private landowners on how to mitigate their actions to minimize adverse impact to water quality and prevent soil erosion, but those programs were already in place and, thus, no new law was needed.

{Tape : 2; Side : A; Approx. Time Counter : 20.8 - 23.8}

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked **SEN. COBB** what he meant by the "curriculum", and **SEN. COBB** explained he was talking about the courses the conservation district was sponsoring as mentioned on lines 12 through 14. **SEN. KEN TOOLE** wanted to know whether this training was available now, and **Bruce Farling** replied that some districts did have some nominal training on how to go through the 310 permitting process, and some may suggest stream restoration courses provided by consultants who worked with this, but to his knowledge, there was no uniform curriculum. **SEN. TOOLE** felt **Mr. Farling** seemed skeptical about this training issue and wondered if it would not be difficult to implement. **Mr. Farling** agreed with that assessment. **SEN. MACK COLE** asked the sponsor what might be done to turn the conservation district into advocates of this bill. **SEN. COBB** admitted this would be difficult. From his experience, the people with the district as well as those with Fish, Wildlife & Parks did not trust people to be educated enough to do things right, and they wanted to have input, and check, beforehand; but then, they seldom go back to inspect the project to make sure it was done properly, and he questioned the wisdom of this process. He criticized the absence of a uniform curriculum for district employees and wondered how they could make the right decisions themselves under the circumstances. **SEN. MCCARTHY** wondered if the extension service could come up with a curriculum, and **SEN. COBB** was not sure if that was the proper agency to deal with this, particularly in light of the fact that there was no proper training for agency personnel. He took offense at the district trying to control this process and issue permits in a very subjective manner.

Closing by Sponsor:

SEN. COBB closed on **SB 364** by saying he introduced this bill to make this process simpler, and at the same time provide the vehicle to educate people.

{Tape : 1; Side : A; Approx. Time Counter : 23.8 - 32.2}

HEARING ON HB 129

Sponsor: **REP. KEITH BALES, HD 1, Otter**

Proponents: **Bud Clinch, Director, Montana Department of
 Natural Resources and Conservation
 John Youngberg, Montana Farm Bureau Federation
 Mike Murphy, Montana Water Resources Association
 Jack Stults, Administrator, Water Resources**

**Division, Montana Department of Natural
Resources and Conservation**

Opponents: None.

Opening Statement by Sponsor:

REP. KEITH BALES, HD 1, Otter, opened by saying **HB 129** was requested by the Department of Natural Resources and Conservation to correct a problem they had with water rights pertaining to domestic wells. Presently, there was a long and cumbersome process involved if a well went dry and the owner wanted to drill for a replacement with the priority date of the original well. On the other hand, one could drill a well with a capacity of less than 35 gallons per minute without having to obtain a permit first. This conflicting and bureaucratic process was the reason for this proposal; it was designed to make it easier to retain the priority date when drilling for a new well for domestic or livestock use. The well had to connect to the same aquifer and have the same volume as the old one. He pointed to another stipulation, that being that an abandoned well could not be replaced with a new one, using that well's priority date, and the well being abandoned in this process had to be capped properly.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 4.2}

Proponents' Testimony:

Bud Clinch, Director, Montana Department of Natural Resources and Conservation, repeated that this bill served to rectify a problem encountered numerous times where individuals approached the department because their wells had gone bad, and they were looking to drill a new well. Under current law, even if the new well was within two feet of the old one, applicants had to go through a change process in order to get a priority date. He welcomed the proposed changes which would do away with a lot of unnecessary paperwork but had the above mention stipulations attached.

{Tape : 1; Side : B; Approx. Time Counter : 4.2 - 5.9}

John Youngberg, Montana Farm Bureau Federation, also stood in support of **HB 129** explaining that, especially in eastern Montana, livestock wells often run dry for lack of groundwater, and the cattle rancher simply could not afford to wait through the application process. This bill would allow him to re-drill that well without prior approval.

{Tape : 1; Side : B; Approx. Time Counter : 5.9 - 6.8}

Mike Murphy, Montana Water Resources Association, rose in support of this proposal, lauding the amendments stipulating the safeguards.

{Tape : 2; Side : B; Approx. Time Counter : 6.8 - 7.3}

Questions from Committee Members and Responses:

SEN. MACK COLE referred to page six and the term "abandonment", wondering what time frame was involved. **Bud Clinch** clarified the time period being ten years. **SEN. COLE** wondered if that meant that a well was not referred to as abandoned for up to ten years after it quit producing. **Bud Clinch** replied this was not so and explained that under this proposed legislation, if a well went bad, a new well could be drilled and the priority date transferred. If a well had not been used in ten years, it would be considered "abandoned" and would not qualify under the provisions of this statute. **SEN. KEN TOOLE** asked whether it was easy to tell where the aquifer was when drilling. **Bud Clinch** explained that a log was kept with regards to the well drilling operation, and this would show the depth that was drilled previously. **SEN. TOOLE** then asked if there was any restriction as far as distance from the original well, and **Mr. Clinch** said there was not. **VICE-CHAIR DALE MAHLUM** wondered whether the new legislation applied if the original aquifer was 80 feet down, and with a new well, you had to drill down to 200 feet to get water. **Mr. Clinch** answered if the applicant chose or had to go to a different aquifer, he would have to go through the normal permitting process, thereby obtaining a new priority date. **VICE-CHAIR MAHLUM** surmised that this bill would not benefit that person, then if the old aquifer had dried up and he had to go to new depths to find water. **Mr. Clinch** agreed, but pointed out that person would automatically be issued a permit as long as the replacement well was under 35 gallons per minute, he would just be given a new priority date for this new well. **SEN. LORENTS GROSFIELD** referred to the term "controlled ground water areas" in the bill and stated that this term referred to certain types of wells but the way this was worded, if one was within the boundaries of any controlled ground water area, one would not be able to drill. **Mr. Clinch** referred this question to **Jack Stults, Administrator, Water Resources Division, Montana Department of Natural Resources and Conservation**, who explained that controlled ground water areas were site-specific and had specific restrictions and conditions attached; they mostly referred to geographic areas or aquifers, and the restrictions were put in place because of conditions that had developed on that aquifer.

{Tape : 1; Side : B; Approx. Time Counter : 7.3 - 18.3}

Closing by Sponsor:

REP. BALES closed by saying **HB 129** was a straightforward bill and he thought that this legislation would primarily be used only for wells that went bad and it would not apply to an aquifer that went dry, as in some circumstances. He stated that, even though this legislation would not be used a whole lot, it would be very valuable when dealing with those situations where it would apply. He urged a DO PASS on this bill.

CHAIRMAN CRISMORE closed the hearing on **HB 129**.

{Tape : 1; Side : B; Approx. Time Counter : 18.4 - 20.1}

EXECUTIVE ACTION ON SB 33

Motion/Vote: **SEN. MCCARTHY** moved that **SB 33 DO PASS**. Motion carried unanimously. Vote was 8-0.

{Tape : 1; Side : B; Approx. Time Counter : 20.1 - 22.2}

OTHER COMMITTEE BUSINESS - SB 270

SB 270 will be put aside for executive action until the next meeting in order that **SEN. VICKI COCCHIARELLA** could be present as per her request.

{Tape : 1; Side : B; Approx. Time Counter : 22.2 - 23.0}

OTHER COMMITTEE BUSINESS - HB 166

Mary Vandenbosch, Legislative Environmental Policy Office, provided the amendments to all committee members, **EXHIBIT**(nas29a05) **HB016601.amv**, for their review.

Discussion: **Ms. Vandenbosch** will contact **David Galt**, Administrator, Motor Carrier Services Division, Montana Department of Transportation and run these proposed changes by him. **CHAIRMAN BILL CRISMORE** stated **HB 166** would be put aside for further study of amendments.

{Tape : 1; Side : B; Approx. Time Counter : 23.0 - 33.0}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 2.1}

EXECUTIVE ACTION ON HB 94

CHAIRMAN BILL CRISMORE directed the committee to open **HB 94** for executive action. **SEN. LORENTS GROSFIELD** asked **CHAIRMAN CRISMORE** to allow **Mary Vandembosch** to respond to his questions that he had raised at the time **HB 94** was heard and added that **Ms. Vandembosch** had drafted an amendment to address that concern. **Ms. Vandembosch** explained that she was not sure that the language changes were necessary but that the amendment (HB009402.amv) would provide much more clarity to the bill. **Sandi Olsen, Administrator, Remediation Division, Montana Department of Environmental Quality** was present along with **William Kirley, Chief Remediation Counsel of the Legal Unit, Montana Department of Environmental Quality**. **Sandi Olsen** stated she had reviewed the amendment and conferred with **William Kirley**. They both agreed the changes did make the bill much clearer and supported the amendment.

Motion/Voice Vote: **SEN. GROSFIELD** moved that **AMENDMENTS TO HB 94 BE ADOPTED**. **EXHIBIT**(nas29a06), HB009402.amv. Motion carried unanimously. Vote was 8-0.

Motion: **SEN. GROSFIELD** moved that **AMENDMENTS TO HB 94 BE ADOPTED**. **EXHIBIT**(nas29a07), HB009401.amv.

Discussion: **Mary Vandembosch** explained the amendments (HB009401.amv) by saying that in the title of the bill, line 10, following "INCURRED", that "OR ENCUMBERED" would be inserted. Also on page 5, line 11, following "incurred", that "or encumbered" would be inserted. Committee members had no comment regarding this amendment and **Sandi Olsen, DEQ**, stated that it was fine with them.

Voice Vote: The motion that **AMENDMENTS TO HB 94 BE ADOPTED**, HB009401.amv, carried unanimously. Vote was 8-0.

Motion/Voice Vote: **SEN. MAHLUM** moved that **HB 94 BE CONCURRED IN AS AMENDED**. Motion carried unanimously. Vote was 8-0.

Amendments HB009401.amv and HB009402.amv were combined to form **EXHIBIT**(nas29a08), HB009403.amv. This final amendment was completed and received on February 6, 2001.

SEN. BEA MCCARTHY was assigned to carry **HB 94** on the Senate floor.

{Tape : 2; Side : A; Approx. Time Counter : 2.1 - 7.8}

ADJOURNMENT

Adjournment: 4:40 P.M.

SEN. WILLIAM CRISMORE, Chairman

NANCY BLECK, Secretary

WC/NB

EXHIBIT (nas29aad)